

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GIGI FAIRCHILD-LITTLEFIELD,

Plaintiff,

vs.

R. AMEZCUA, et al.,

Defendants.

1:20-cv-00799-NONE-GSA-PC

**ORDER DISCHARGING ORDER TO
SHOW CAUSE
(ECF No. 15.)**

Gigi Fairchild-Littlefield ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On June 9, 2020, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

On July 23, 2020, the court issued an order to show cause requiring Plaintiff to show cause why this case should not be dismissed for failure to exhaust her administrative remedies before filing suit, as shown on the face of the Complaint. (ECF No. 15.) On August 3, 2020, Plaintiff filed a response to the court's order arguing that this case should not be dismissed for failure to exhaust administrative remedies because she attempted to use the 602 appeals process at the prison but was hindered by prison personnel who did not provide her with documents she needed. (ECF No. 18.)

While this order is not a finding that Plaintiff exhausted all of her available remedies for the claims in this case before filing suit, the court finds that Plaintiff's failure to exhaust remedies

1 is no longer clear on the face of the Complaint and therefore the court shall not resolve this issue
2 at this stage of the proceedings. Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir. 2014) (en banc)
3 (where failure to exhaust is clear from face of complaint, case is subject to dismissal for failure
4 to state a claim under Rule 12(b(6)); Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003) (“A
5 prisoner’s concession to nonexhaustion is a valid ground for dismissal. . . .”) (overruled on other
6 grounds by Albino, 747 F.3d at 1168-69). Accordingly, the court’s order to show cause, issued
7 on July 23, 2020, shall be discharged.

8 Based on the foregoing, IT IS HEREBY ORDERED that:

- 9 1. The court’s order to show cause, issued on July 23, 2020, is DISCHARGED; and
10 2. The court shall screen Plaintiff’s Complaint in due course.

11 IT IS SO ORDERED.
12

13 Dated: August 17, 2020

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE